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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,442	08/05/2003	Neil G. Sellars	98-40145-US-C	8282

7590 04/17/2007
Louis M. Heidelberger
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EXAMINER

AHMAD, NASSER

ART UNIT	PAPER NUMBER
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1772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/634,442

Applicant(s)

SELLARS, NEIL G.

Examiner

Nasser Ahmad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer is not approved because an attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

Rejection Maintained

2. Claims 33-48 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 6670345 for reasons of record made in the Office Action of 10/6/2006.

3. Claims 33-48 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-51 of copending Application No. 10/634443 for reasons of record made in the Office Action of 10/6/2006.

Response to Arguments

4. Applicant's arguments filed 1/31/2007 have been fully considered but they are not persuasive.

Applicant's statement that terminal disclaimer is enclosed to obviate the provisional double patenting over copending application No. 10/634443 could not be located with the response and hence, said double patenting rejection is maintained.

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As for the terminal disclaimer for USP 6670345, it is disapproved because the attorney is not of record.

The following are new ground of rejections in view of the newly uncovered prior art.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 33-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Cheng (5817382).

Cheng relates to a device (figure-5) comprising a substantially planar member (38) having oppositely disposed first and second surfaces, a length greater than the periphery of said object (such as flowers, plants, etc.) and a first edge (42) having a different length than a second edge (40) such that a first length of the member is oriented at an oblique angle relative to a second length (figure-4 and col. 7, lines 24-35); printed indicia (15") on at least one of a portion of said first surface and a portion of said second surface; and at least one adhesive (41) on at least a portion of said second surface.

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The phrase "for labeling an object having a periphery", "suitable for affixing said device about said periphery of said object", etc. has not been given any patentable weight because it is not found to be of positive limitation.

For claim 34, said adhesive is a pressure sensitive because the adhesive is provided with a cover layer (col. 4, lines 38-42)

For claim 35, the adhesive comprises a releasable adhesive to a portion of said second surface.

The phrase "for facilitating re-attachable at least partial separation of said device from said periphery of said object when said device is affixed about said periphery of said object" is directed to an intended use of the claimed device and is not found to be of positive limitation.

Regarding claim 36, the device further comprises a protective material applied to at least one portion of said member not bearing adhesive (such as the adjacent in the stack in figure-5.

For claim 37, the device has at least a portion of said adhesive at least partially deadened because the areas between the adhesive imprints re deadened.

As for claim 38, said member further comprises a tab as each member is lifted from th stack of figure-5.

The intended use phrase "for facilitating re-attachable at least partial separation of said device from said periphery of said object when said device is affixed about said periphery of said object" has not been given any patentable weight.

Claim 39, the adhesive applied to said tab is substantially completely deadened

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because it is covered by the protective cover.

Claim 40, the intended use phrase "at least a portion of said member is suitable for providing potential tamper evidencing of an object to which said device is affixed about" is not found to be of positive limitation.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 41, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng in view of Taylor (GB: 2277075).

Cheng, as discussed above, fails to teach that the member comprises a recessed edge. Taylor discloses a wrapper comprising a tab (11), figure-1, wherein the tab is recessed from the upper and lower edges of the wrapper member for facilitating adherence to an object. Therefore, it would have been obvious too one having ordinary skill in the art to utilize Taylor's teaching of using a member with recessed edge in the invention of Cheng with the motivation to provide for adherence to an abject.

The intended use phrase "for facilitating re-attachable at least partial separation of said device from said periphery of said object when said device is affixed about said periphery of said object" is not deemed to be of positive limitation.

9. Claims 42-44, 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng in view of Seidl (EP 463193A1)..

Cheng, as discussed above, fails to teach the device comprising at least one perforation in said substantially planar member. Seidl discloses a wrapper (1) comprising at least one perforation (6) in said planar wrapper member to facilitate separation of a part from the member. Therefore, it would have been obvious to one having ordinary skill in the art to utilize Seidl's teaching of providing a perforation in the member of Cheng with the motivation to facilitate separation of a part from the member. For claim 44, the intended use phrase "at least one of said parts is suitable for providing potential tamper evidencing of an object to which said device is affixed about" has not been given any patentable weight because said phrase is not found to be of positive limitation.

As for claim 47, the perforation 's saring point at the edge will provde for the recessed edge.

The intended use phrase "for facilitating re-attachable at least partial separation of said device from said periphery of said object when said device is affixed about said periphery of said object" has not been given any patentable weight.

Allowable Subject Matter

10. Claims 45-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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The prior art fails to teach the device further comprising a removable cap and at least one of said parts of said member is positioned with respect to at least one other of said parts and so as to be affixed about said cap where said device is affixed about said object.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Nasser Ahmad 4/13/07
Primary Examiner
Art Unit 1772

N. Ahmad.
April 12, 2007.